

1 _____ BILL NO. _____

2 INTRODUCED BY _____
3 (Primary Sponsor)

4 BY REQUEST OF THE LAW, JUSTICE, AND INDIAN AFFAIRS INTERIM COMMITTEE

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6 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A PHYSICIAN ASSISTANT-CERTIFIED MAY
7 PERFORM PREVIABILITY ABORTIONS IF THAT PROCEDURE IS INCLUDED IN THE PHYSICIAN
8 ASSISTANT-CERTIFIED'S UTILIZATION PLAN; AND AMENDING SECTIONS 37-20-103 AND 50-20-109,
9 MCA."

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11 WHEREAS, in *Armstrong v. State*, 1999 MT 261, 296 Mont. 361, 989 P.2d 364 (1999), the
12 Montana Supreme Court held that amendments to sections 37-20-103 and 50-20-109, MCA, enacted
13 pursuant to Chapter 321, Laws of 1995, prohibiting a physician assistant-certified from performing a
14 previability abortion under the supervision of a licensed physician are unconstitutional under Article II,
15 section 10, of the Montana Constitution.

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17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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19 **Section 1.** Section 37-20-103, MCA, is amended to read:

20 **"37-20-103. Limitations on authority conferred -- exception.** Except as provided in 37-10-102,
21 nothing in this chapter may be construed to authorize a physician assistant-certified to perform those
22 functions and duties specifically delegated by law to persons licensed as optometrists, as defined under
23 Title 37, chapter 10. ~~A physician assistant-certified may not perform an abortion.~~"

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25 **Section 2.** Section 50-20-109, MCA, is amended to read:

26 **"50-20-109. Control of practice of abortion.** (1) Except as provided in 50-20-401, an abortion
27 may not be performed within the state of Montana:

28 (a) except by a licensed physician or by a physician assistant-certified, provided that the practice
29 of abortion is included in the physician assistant-certified's utilization plan required under 37-20-301;

30 (b) after viability of the fetus, except as provided in subsection (2).

(2) An abortion under subsection (1)(b) may be performed only to preserve the life or health of the mother and only if:

(a) the judgment of the physician who is to perform the abortion is first certified in writing by the physician, setting forth in detail the facts relied upon in making the judgment; and

(b) two other licensed physicians have first examined the patient and concurred in writing with the judgment. The certification and concurrence in this subsection (2)(b) are not required if a licensed physician certifies that the abortion is necessary to preserve the life of the mother.

(3) The timing and procedure used in performing an abortion under subsection (1)(b) must be such that the viability of the fetus is not intentionally or negligently endangered, as the term "negligently" is defined in 45-2-101. The fetus may be intentionally endangered or destroyed only if necessary to preserve the life or health of the mother.

(4) For purposes of this section, "health" means the prevention of a risk of substantial and irreversible impairment of a major bodily function.

~~(5) The utilization plan of a physician assistant certified may not provide for performing abortions.~~

~~(6)~~(5) Violation of subsections (1) through (3) ~~and (5)~~ is a felony."

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